Supreme Court, U.S.
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NO.

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1986

JAMES SHELTON, et aux,

Petitioners,

vs.

UNITED STATES OF AMERICA,
et al.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Yoshi Y. and James Shelton
4733 Village Pl. N.E.
Seattle, Wa. 98105
(206) 525-6200

15 May 1987

Counsels Pro Se for
Petitioners

Question Presented

Whether Japanese Americans can be incarcerated in cattle pens without due process and be denied due process such as provided in RCW Court Rule 60(e) and JCrR 2.01 and be subjected to boycott based on this Courts Korematsu v. U.S., 323 U.S. 214 (1944) decision, that Japanese Americans are not entitled to due process?

List of Parties

James and Yoshi Shelton, d/b/a University Village Music Center, a minority listed business: and Respondents; United States, State of Washington, King County, John Doe State Attorney General, Norm Maleng, Carolyn Patton, Frank Brouilett, One Unknown U.S. Officer, State Public Schools and Universitys, and Gen. J.I. Dewitt.

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CASES:

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CONSTITUTIONAL, STATUTORY and REGULATORY PROVISIONS INVOLVED

Federal Rules of Civil Procedure
5 (a) - 12,15,17,21

Justice Criminal Court Rule
2.01 - 9,13,14,19

RCW Civil Rule 60 (e) -2,7,9 ,13,14,19,21

The Petitioner, James Shelton and spouse Yoshi Yonekawa Shelton doing business as University Village Music Center, a federally qualified minority business, respectfully prays that a writ of certiorari issue to review the judgment order of the Court of Appeals Ninth Circuit entered in this proceeding on 10 April 1987. In a case of first impression, the Court of Appeals denied petition, affirming District Court judgment that matter be dismissed, and summary judgment be granted to respondents, i.e. that Japs (Japanese Americans) are not entitled to RCW 60(e) & JCrR 2.01 due process rights and may be incarcerated in cattle pens without due process.

Opinions Below

The judgment order of the Court of Appeals, not recorded and annotated 'not for publication', appears in the Appendix hereto. The opinion of the District Court at Seattle also appears in the Appendix as well as the district court order on the amended complaint.

Jurisdiction

The judgment of the Court of Appeals was entered on 10 April 1987, and this petition for certiorari was filed within 90 days of that date. This Court's jurisdiction is involked under 28 U.S.C. 1254(1).

Constitutional, Statutory and

Regulatory Provisions Involved

United States Constitution Article VI, cl. 2:

'This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; ...shall be the supreme Law of the Land;...'

Washington State Superior Court Rule: RCW 60(e).*

Washington State Justice Criminal Court Rule:

JCrR 2.01 (c) (1)

F.R.C.P. Rule 5(a).

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* Note: Pursuant to Rule 21 (f) the remaining provisions are lengthy. Accordingly, citation alone is given with pertinent text included in the Appendix hereto.

Statement of the Case

In a 1943 case this Court in Korematsu v. U.S., 323 U.S. 214, 65 Sup. Ct. 193 (1944) held that 120,000 Japs could be removed from the West Coast and placed in consentration camps without trial or due process.

Dissent by Justice Jackson stated: 'The Court for all time has validated the principle of racial discrimination...and of transplanting American citizens. The principle then lies around like a loaded weapon ready for the hand of any authority....'

It is the purpose of this writ to report to this Court that the above Jackson statement has come to pass here in Washington State. It is not possible here in Seattle, for 'Japs' to get a fair hearing in either State courts or at

Federal Agencys, since this Court has ruled that Japs are not entitled to due process rights.

Petitioner presented papers and articles to Federal courts which showed gross discrimination in Washington State and that this discrimination was causal in defrauding petitioners of their RCW 60(e) vacating due process rights. The complaint posed the issue of whether petitioners were entitled to the due process afforded by RCW 60(e) and that violation thereof was a violation of their Constitutional due process rights.

The complaint and propossed amendments was brought to save our minority business from acumulative effect of discriminatory actions by Government powered officers. The district court on the one hand ordered the complaint amended to include et Aux and on the other hand refused to allow a default

when the opposing parties did not answer.

In addition to the Federal minority directory the said business was also listed as minority business in the Washington State minority directory of 1980 and in fact is the only music store listed in that minority directory.

Dispite some 12 years of continous business and the fact that we were only such business listed in State minority directory, not one single item has been purchased nor has any bid proposals even been received from said State or State supported agencys and schools.

That Washington State minority directory of 1984 no longer lists our business nor are any other minority music businesses listed in that directory and that State dropped us from the directory without any kind of hearing or notice. The sole purpose of which was to

eliminate minority business from public school sales and bids, because we are 'Japs'.

The State of Washington first began discriminating against said business owners in 1942 when Government sent Army and sheriff to remove from schooland state and incarcerate owner Yoshi Shelton because she was American of Japanese desent and even though she was only 9 years old at the time and over 200 miles from the Pacific Ocean coast. (This removal was based on exclusion order 98 which called for removal of Japanese within 100 miles of Pacific coast line). Yoshi was allowed what she could carry in her little arms and was then held under armed guard in cattle pens at Washington/Oregon border for several months without any kind of hearing or process.

That said owner was

subsequently entirely removed from State to a wilderness mountain prison camp and held under armed guard there for several years without any kind of hearing or due process or even extradition process and was referred to as a dirty 'Jap', with no rights.

This was not the first time that Japanese Americans were discriminated against: Enactment of the Washington State Anti Alien Land Acts of 1921 and 1923, the Federal Immigration Act of 1924, and the prevailing anti-Japanese climate prompted dozens of families---unable to own land---to give up farming and leave state and others moved to cities, unable to farm, and sought any employment open to them.

As a result of the aforesaid, Owner was denied inter alia, her freedom, due process rights, habeus corpus, raised in a concentration camp, grew up in a barracks and prison atmosphere, traumatized by the experience and constantly referred to as a 'Jap' and now we are having our business and minority status interferred with and penalized in court for complaining about the matter.

This State has a long history of anti alien attitudes and laws regarding Japanese, where denying aliens their rights and due process was the norm. In fact this discrimination has grown until today the anti 'Jap' discrimination in Washington State is so bad it has grown like a cancer in various state, city, and county and even Federal agencys here in Seattle, as will be shown

hereinthroughout.

Our minority business has filed 16 cases with police for stolen and missing music instrument rentals which authorities totally refuse to take action. One such case involved Internal Revenue Service employee where said employee rented two instruments and then sold same. No action was taken by I.R.S. or local authorities. However, in this instance and another instance we filed Citizens complaint under Justice Criminal Rules but authorities still refused to handle the matter.

In another case Owners/Petitioners filed a state civil action and were given summary judgment where purchaser tried to return a violin after she had damaged same, only to have the judgment stripped away without due process guaranteed by rules covering vacating proceedure, i.e.RCW 60(e). As a result a complaint

was filed and issue in instant case was presented to Federal Courts of 9th Circuit that 'ARE MINORITIES ENTITLED TO THE DUE PROCESS PROVISIONS OF CONSTITUTION?' The 9th Circuit Court denied* the petition and completely evaded the question of Constitutional due process rights.

NOTE: * The Ninth Circuit Court ruled on the appeal filed but completely failed or forgot to rule on Summary Affirmance motion presented by some parties.

As a result of the aforesaid we conclude our minority business was targeted by State officials where an anti 'Jap' discrimination movement thwarted our due process rights to the vacating process of RCW 60(e), removal of our business from the minority directory without notice or hearing, and subsequent denying us access to JCrR 2.01 process as well as refusing to do business with us because of our minority status and refusing to prosecute some 16 cases where instruments were taken from us. As a result our business and sales are at a stand still and their actions are damaging our free trade. Additionally, not only are we without state process as stated but state

vemenantly urged government to incarcerate all 'Japs' (this included Yoshi) through out state wether or not within 100 miles of coast. Thus Yoshi was removed from school several months in violation of truancy laws and then incarcerated in cattle pens and not compensated nor rehabilitated.

Lack of Process in Case

Petitioners James and Yoshi Yonekawa Shelton were man and wife d/b/a University Village Music Center at the time of this complaint and are each appearing pro se.

Yoshi, due to a typographical error, was ommitted from the title of the complaint, although clearly contained in the body of the complaint. Yoshi was therefore added to the title via amendment by order of the court. See

appendix order dated 28 Feb. 1986.

Service was effected to all parties pursuant to the court´s order. The court presented no other requirements at the time nor did any of the parties object to the order at the time.

Subsequently, no answer nor motion involving Yoshi was ever presented or served to Yoshi. Therefore Yoshi signed and presented motion & Memo for default judgment, accompanying a motion & memo to vacate on 28 May 1986.

The court had dismissed the case even though there was no answer with resspect to Yoshi and none of the respondents motions or papers were served nor addressed to Yoshi.

Yoshi signed the motion and memo for default and signed the Brief of Appellants to 9th Circuit Court and appears to be representing herself while James represents himself. since there

has yet to be a hearing or trial there has so far been no need for an attorney to try the case.

The sequence of events were as follows:

1. On 28 Feb. 1986 court ordered the amended complaint served on all parties.
2. During March 1986 the amended complaint was served on all aparties.
3. During April 1986 Yoshi awaited expected answers from parties on the complaint with respect to herself.
4. On 28 May 1986 James filed motion to vacate because respondents had failed to serve their papers to 'each' party as required by F.R.C.P. Rule 5(a) and Yoshi attached and submitted her motion and memo for default due to their non-answer.

The lower court denied this motion. Apparently courts will use any excuse not to grant 'Japs' their rights and remedys for being put in cattle pens.

REASONS FOR GRANTING THE WRIT

I. The Decision Below Has Decided An Important Question of Federal Law Which Has Not Been, But Should Be, Settled By This Court And Has Decided Such Federal Question In A Way In Conflict With The Applicable Decisions Of This Court.

The decision of the court below, that petitioner is not entitled to hearing prior to vacating a judgment and that we (minority Japanese) should recognize that due process such as RCW 60(e) and JCrR 2.01 are only for aristocrats; is predicated upon a complete misconception of the basic United States due process rights and law which Congress so carefully enacted to offset the awesome powers given to state courts.

Respondents violation of our due

process rights in stripping our business from the state minority directory without a hearing and refusing to do business with us because of our minority status, are clearly violations of our Federally protected rights.

> Procedural due process requires that parties whose rights are to be affected are entitled to be heard at a meaningful time, Fuentes v. Shevin, (1972) 407 U.S. 67, 92 S.Ct. 1983

Respondents violation of our due process rights where absolutely none of the vacating RCW 60 (e) and JCrR 2.01 proceedure was followed and where we were refused these rights, and led ultimately to loss of our due process rights.

> ...there are constitutional limitations on power of courts, even in aid of their own valid process, to dismiss action without affording party opportunity for hearing on merits of his cause. Society Int. Pour Participations

v. Rogers, 357 U.S. 197

Respondents violation of the rule 5(a)and due process was clear and unequivocal and deprived Yoshi of that process.

> Violation of a statute or regulation constitutes negligence as a matter of law when violation results in injury to a member of the class of persons intended to be protected by the legislation and when the harm is of the kind which the statute or regulation was intended to prevent. Stachniewecz v. Mar-Cam Corp., (1970) 495 F.2d 436

The respondents deliberately sought to deprive us of our due process rights.

> No man in this country is so high that he is above the law. No officer os the law may set that law at defiance with impunity. U.S. v. Claiborne, F.2d , (9th Cir. 1984)

Violation of our due process rights was an unconscionable act motivated by racial discrimination against this

minority small family business.

> The Civil Rights Act was intended to establish paramount importance in our federal scheme of constitutionally protected rights. Duke v. State of Texas, (1971) 327 F.Supp 1218

When ruling in the Korematsu v. U.S., Supra case It is difficult to believe that this Court anticapated Japanese/Americans would be kept in cattle pens, not reimbursed for property losses, nor rehabilitated. Therefore, the 'manner' of incarceration should be reviewed by this Court.

Secondly: The one knawing question is: Why weren't Germans & Italians also incarcerated, if war was the true reason. The Court will find the answer in the record if certiorari is granted. The Court will also find in the record case evidence that U.S. distorted and withheld information from this Court in the

Korematsu v. U.S., Supra case, thus causing the Court to be not fully informed on the matter. In summary, it was bad enough to incarcerate Yoshi in cattle pens but to now deny Yoshi court due process on the matter may even be worse. This is another reason for the Court to grant certiorari and review the matter.

Note that when other countries, such as Canada, relocated citizens, the government purchased their property and paid their moving expenses. But even so, the citizen lost since he had to start over from scratch.

Respondents failure to comply with court rules on F.R.C.P. Rule 5 (a) was clearly an act of bad faith at the very least and denied litigants access to process on the case.

Petitioner clearly presented the

federal constitutionally protected issue of due process, to the Ninth Circuit Court. In fact petitioner specifically requested court to answer each issue rather than issue a general judgment. But, the Appellate Court completely evaded the due process issues.

On
petition for certiorari to review a decree of a lower court as denying or not duly recognizing a federal right set up therein, it is the Supreme Court's

province to inquire, not only whether such right was denied in direct terms, but also whether it was denied in substance and effect by interposing a non-federal ground of decision without fair support.
Ancient Egyptian Arabic Order of Nobles of the mystic Shrine v. Michaux,
49 S.Ct. 485, 279 U.S. 737, 73 L.Ed.931

II Some 120,000 Individuals, Of Japanese Blood Lines Incarcerated Nationwide Are Affected By The Erroneous Statutory Interpretation Of The Courts Below.

The importance of the case at bar is underscored and the logic of granting the writ of certiorari bolstered by the fact that many individuals and businesses are involved or will be affected by the erroneous statutory interpretation below.

Maintainance of minority businesses requires agencys make a share of their purchases from these businesses, and not eleminate them from the state listing without a notice or process.

But certainly minoritys are at the very least entitled to the minimumal due process assured to all by RCW 60(e) and JCrR 2.01. The Ninth Circuit Court completely evaded this issue.

The court of appeals opinion would be more palitable if it were published so that it would apply to all. As it now stands the unpublished opinion will not

apply to whites and aristocrats but only to our minority ´Jap´ case. But the case involves racial issues that should be applied equally to all.

Moreover, the court of appeals opinion alludes to factual issues which have not been settled by a trier of fact. While the facts conserning the heavy discrimination against James & Yoshi and their business have not been tried, it can be seen that discrimination and the attendant economic pressure were a strain on James & Yoshi.

Certainly Yoshi should be compensated for cruelty in placing her in dirty filthy cattle pens months without proper sanitation, school, and care.

CErtainly Yoshi should be remedied for property loss. ´Japs´ were forced to liquidate in few weeks and allowed to take only what could be carried. If you were forced to sell your property in 2

weeks what losses would you likely have to take to accomplish it.

We are a minority and should have been given preferential treatment if anything. But lets look at history:

Japanese were first run out of this State by enactment of the Washington State Anti Alien Land Acts of 1921 and 1923 when the courts did nothing to protect these minorities.

Later, the State seized upon Exclusion Order 98, which only called for removal within 100 miles of Pacific, to remove all 'Japs' from this State, and again the courts did nothing to protect these minorities from these acts against them.

Now, officials are again engaged in running 'Japs' out of state or at least out of business, by missuse of the RCW 60(e) and Rule 5(a) proceedures, and

again the courts do nothing to stop this abuse of these minorities and the process. Japanese citizens in this state deserve fair treatment and remedy for their losses. A ruling by this Court will assure just treatment of these citizens in the future, remove any doubt as to whether they are entitled to due process, and restore the equal protection to these minorities.

Secondly: The Ninth Circuit courts have the sloppest disregard* for proceedure of any court in the country. In this one case courts overlooked lack of service and complete default, and the court failed to respond to motions, and opinions were mailed over a month late.

Rules of proceedure, truancy laws and due process were not meant for the exclusive use of 'whites'. A review of this case is appropriate if only for this reason.

The 9th Circuit court likes to sweep its bad decisions under carpet of 'do not publish' and 'this case may not be referred to or recited by courts of this circuit'. Because of this lack of publication the court's decision will not apply equally to whites and others, i.e. Yoshi should have been housed and treated same as whites and not like some animal and kept in animal pens as she was. For this reason a review of the case is appropriate.

> The abandoment of a positive non-discrimination policy by a State in favor of a neutral stance which would allow discrimination to occur in the sale and rental of private property constitutes State action within the meaning of the Fourteenth Amendment.
> Reitman v. Mulkey, 387 U.S. 369 (1967)

> It is well settled that States have an inherent power to regulate the practice of law in their courts, but where solicitation and counseling activities by lawyers attain the

status of politcal expression and association, free exercise of these rights may not be chilled by vague and overbroad reactions which lend themselves to selective enforcement against unpopular causes. NAACP v. Button, 371 U.S. 415 (1963)

Federal government has the power under the 13th Amendment rationally to determine what are the badges and incidents of slavery, and the authority to translate that determination into effective legislation; and such legislation will be upheld whenever it applied to punish any intentional deprivation of any constitutional right on the basis of race. A party need not act "under color of law" to violate the 13th Amendment. All that is required is an intentional discriminatory act. Griffin v. Breckenridge, 403 U.S. 88 (1971)

NOTE:* Just because Yoshi chose c/o James Shelton 4733 Village Pl. N.E., Seattle, Wa. 98105, as her mailing/ receiving address does not necessarily mean some one is representing her or that she is not making her own decisions.

As the Court will note from 'List Of Parties' (Page i) this case involves several individuals. Under Ex Parte Young, 209 U.S. 123 doctrine, individuals are not intitled to soveriegn immunity. The appellate court opinion should therefore be reviewed to eliminate

discrimination against Japanese/Americans since the war.

Finally, according to the newspapers, the Court has accepted another case of internment for review and Yoshi's interment should recieve the same attention and equal review.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully Submitted,

James Shelton, Yoshi Shelton, Pro Se,
4733 Village Pl. N.E., Seattle, Wa. 98105
525-6200.

A P P E N D I X

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 86-4041

JAMES SHELTON, et aux, d/b/a University Village Music Center,
Appellant

v.

UNITED STATES OF AMERICA; WASHINGTON STATE PUBLIC SCHOOLS and UNIVERSITIES; J.L. DEWITT, et al.,

Appeal from the United States District Court for the Western District of Washington
District Judge Barbara J. Rothstein, Presiding

Submitted April 6, 1987 - Seattle, Washington*

Before: BROWNING, WRIGHT, and HALL, Circuit Judges.

James Shelton, doing business as University Village Music Company, appeals from the dismissal of all defendant and the order denying his motion to amend his

complaint and his motion to vacate the judgment of dismissal. We affirm.

First, Sheltons claims of discrimination and conspiracy are groundless. His conclusory allegations do not state a claim for relief. Mosher v. H.C. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978), cert. denied, 442 U.S. 941 (1979). His claim against Carolyn Patton is meritless. She had no duty to list Shelton in the state directory absent a complete application form.

In addition, many of the defendants are shielded from suit by immunity doctrines. Ashelman v. Pope, 793 F.2d 1072, 1075-78 (9th Cir. 1986) (prosecutorial immunity); hohri v. United States, 782 F.2d 227, 242 (D.C.Cir.), cert. granted, 107 S.Ct. 454 (1986)(sovereign immunity); McConnell v. Critchlow, 661 F.2d 116, 117 (9th Cir. 1981)(Eleventh Amendment immunity). It

appears beyond a doubt that Sshelton has no claim entitling him to relief.

Second, the alleged claims of harassment and constitutional violations are not properly before us. Relitigation of these issues and those that could have been raised are barred by res judicata. Allen v. McCurry, 449 U.S. 90, 94 (1980). His claim that his wife's constitutional rights were violated also fails. A pro per party may not represent one other than himself. Church of the New Testament v. United States, 783 F.2d 771, 774 (9th Cir. 1986); McShane v. United States, 366 F.2d 286, 288 (9th Cir. 1966).

Finally, all remaining claims were appropriately dismissed, as were the denial of his motions to amend and to vacate the judgment. Dismissal of each was firmly grounded in circuit precedent. Their lack of merit does not warrant

discussion.

AFFIRMED.

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* This disposition is not appropriate for publication and may not be recited to or by the courts of this circuit except as provided by Ninth Circuit Rule 21.

Oral argument waived by the court.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

No.C85-739R

JAMES SHELTON, et aux, d/b/a University Village Music Center,
Plaintiffs,

v.

UNITED STATES OF AMERICA; et al.,
Defendants.

THIS MATTER comes before the court on a motion by plaintiffs to vacate this court's dismissal of their case and for default judgment. Having reviewed plaintiffs' motion together with all pleadings filed in support and in oppossition, and being fully advised, the court finds and rules as follows:

Plaintiffs move for vacation of the court's judgment dismissing their case on

the grounds that Yoshi Shelton was not served with seperate copies of defendants' pleadings after she became a party in this case. They also move for default judgment against defendants based on this purported failure to serve process.

Plaintiffs' motion has absolutely no merit. James Shelton has consistantly put himself forth as Yoshi Shelton's attorney in this case and has specifically asked that pleadings be filed upon him in that capacity. See, e.g., the copy of the summons recieved by defendant Carolyn Patton appended to Memorandum of Authorities of Defendants John Doe State Attorney General, Frank B. Brouilett and Carolyn Patton in Opposition to Plaintiffs' <otion to Dismiss filed on June 5, 1986. Therefore, plaintiffs are essentially asking this court to penalize Defendants

for taking Mr. Shelton at his word. The Court refuses to do so.

Plaintiffs' motion is DENIED.

IT IS SO ORDERED.

The Clerk of the Court is directed to forward copies of this Order to counsel of record ant to plaintiffs.

Dated at Seattle, Washington this 3rd day of July, 1986.

Barbara J. Rothstein
United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

No.C85-739R

JAMES SHELTON, et aux, d/b/a University Village Music Center,
Plaintiffs,

v.

UNITED STATES OF AMERICA; et al.,
Defendants.

JUDGMENT IN A CIVIL CASE

Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

THAT THIS ACTION IS DISMISSED.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

No.C85-739R

JAMES SHELTON, d/b/a University Village Music Center, et ux.,
Plaintiffs,

v.

UNITED STATES OF AMERICA; et al.,
Defendants.

ORDER CONSOLIDATING COMPLAINTS AND DIRECTING PL AINTIFF TO EFFECT SERVICE

The original complaint filed in this matter set forth as plaintiff James Shelton, d/b/a University Village Music Store. On 28 August 1985, this court granted the motion of defendant United States to dismiss the compalint within 30 days. On 13 September 1985, the plaintiff filed an 'Amendment to Complaint,' which included his wife as a

party to this lawsuit. Service of the 'Amendment to Complaint' was effected only as to defendant United States.

IT IS NOW, THEREFORE, ORDERED that the amendment to the complaint be consolidated with the original complaint and that the plaintiff effect service of the amendment on all defendants to this lawsuit within 20 days of this date.

The Clerk of Court is directed to forward copies of this Order Consolidating Complaints and Directing Plaintiff to Effect Service to all counsel of record.

Dated this 28th day of February 1986.

Barbara J. Rothstein
U.S. Distric Judge

RULES OF CIVIL PROCEDURE

SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

RULE 5 (a) Service: When Required. Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record

on appeal, and simular paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

In an action begun by seizure of property, in which no person need be or is named as defendant, any service required to be made prior to the filing of an answer, claim, or appearance shall be made upon the person having custody or possession of the property at the time of its seizure.

JUSTICE COURT CRIMINAL RULES

JCrR 2.01 (c) Citizen Complaints.

(1) citizen´s Complaint-Alternate Method-The judge may consider any complaint on the basis of an affidavit sworn to before the judge, a clerk, commissioner or notary public where the judge is satisfied that probable cause exists, that the complaining witness is aware of the gravity of initiating a criminal complaint, the necessity of a court appearance for himself and witnesses, the possible liability of false arrest and consequences of perjury, such affidavit may be in sub stantially the form as provided herein.

(d) Filing.

(1) The original of the complaint or citation and notice shall be filed with the clerk of the court, and sufficient copies shall be prepared in order to provide a copy for each defendant.

RULE 60. RELIEF FROM JUDGMENT OR ORDER

(e) Procedure on Vacation of Judgment.

(1) Motion. Application shall be made by motion filed in the cause stating the grounds upon which relief is asked, and supported by the affidavit of the applicant or his attorney setting forth a concise statement of the facts or errors upon which the motion is based, and if the party be a defendant, the facts constituting a defense to the action or proceeding.

(2) Notice. Upon the filing of the motion and affidavit, the court shall enter an order fixing the time and place of the hearing thereof and directing all paarties to the action or proceeding who may be affected thereby to appear and

show cause why the relief asked for should not be granted.

(3) Service. The motion, affidavit, and the order to show cause shall be served upon all parties affected in the same manner as in the case of summons in a civil action at such time before the date fixed for the hearing as the order shall provide;